

\$~16

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **BAIL APPLN. 483/2015**

HARENDER PASSI

..... Petitioner

Through: **Mr.Tanvir Quiser, Advocate.**

versus

THE STATE NCT OF DELHI

..... Respondent

Through: **Ms.Alpana Pandey, APP for the State
with Insp. Suresh Kumar, PS
Mundka.**

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

%

03.02.2016

1. The petitioner before this Court is facing trial in case FIR No.230/2011 under Sections 302/460/201/411/34 IPC, PS Mundka, Delhi.
2. I have heard Mr.Tanvir Quiser, Advocate for the petitioner and Ms.Alpana Pandey, learned APP for the State.
3. The petitioner is seeking bail mainly on the following grounds:-
 - (i) The petitioner has not been named in the FIR.
 - (ii) Some of the co-accused persons have already been enlarged on bail by learned ASJ as well as by this Court.
 - (iii) It is a case based only on circumstantial evidence and there is not enough evidence to complete the chain of circumstances hence it cannot be said that no other hypothesis but that of the guilt of the Appellant is possible on the basis of the evidence adduced by the prosecution.

(iv) No evidence has been collected by the prosecution to prove the guilt of the petitioner.

(v) The only evidence against the petitioner is that the dead body was recovered after fifteen days of the occurrence at the instance of the petitioner.

(vi) There are material discrepancies in the statement of prosecution witnesses especially PW-4 and PW-5.

(vii) The dead body was recovered at the instance of three accused persons and in a case of recovery made at the instance of three persons all together, such recovery is worthless and cannot be made basis to hold him guilty.

4. Learned counsel for the petitioner has relied upon ***Kavinder & Ors vs. State (NCT of Delhi) 2005 Cr.L.J. 1580*** in support of his last contention and prayed for grant of bail to the petitioner.

5. On behalf of State, prayer for bail has been opposed by learned APP submitting that the petitioner is involved in a heinous crime i.e. for the offence punishable under Section 302 IPC and dead body was recovered at his behest. It has been further submitted that trial is in progress and in case the petitioner is released on bail, there is possibility of he being fleeing from justice. Learned APP for the State has further submitted that the co-accused have been granted bail on the basis of the role attributed to them and the role attributed to the present petitioner is different from other co-accused persons. Learned APP for the State has prayed for dismissal of the bail application.

6. I have considered the rival contentions and carefully gone through the record.

7. Alongwith the bail application, certified copy of the order dated

24.04.2014 passed in Bail Appln. No.5/2014 filed by co-accused Manoj Kumar has also been annexed. The co-accused Manoj Kumar has been granted bail for the following reasons:-

'5. It is pointed out that out of 24 witnesses 14 witnesses have already been examined. As per the status report furnished, the name of the petitioner has come only on the basis of disclosure statement of co-accused persons mentioned above. The alleged incident is of night intervening 22/23.12.2011. As per investigation, the dead body of the deceased Arjun Mehto was recovered on 6.1.2012 at the instance of co-accused persons, namely, Harender Passi, Hari Pal Singh and Sugreev. The alleged stolen property i.e. 60 drums of oil as per investigation carried out has also been recovered at the instance of aforesaid co-accused persons from a rented plot in Mundka, which was in possession of co-accused Birja who was arrested under Section 412 IPC. The said co-accused Birja is already on bail.

6. Learned APP has failed to point out any prima facie evidence which connects the petitioner with the alleged occurrence.

7. In view of the above submissions made, the petitioner is admitted to bail on furnishing bail bond in the sum of Rs.10,000/- with surety of like amount to the satisfaction of concerned trial court.

The bail application stands disposed of.

It is clarified that the above observations have been made for the purposes of disposal of present bail application and nothing stated hereinabove shall have any bearing on the merits of the case.'

8. The petitioner before this Court is Harender Passi at whose instance dead body was allegedly recovered. Not only that, the stolen property i.e. 60 drums of oil has also been allegedly recovered at the instance of present petitioner and two other co-accused persons namely Hari Pal Singh and Sugreev.

9. The trial is in progress and substantial number of witnesses have already been examined. The trial is likely to conclude shortly. The fact that recovery of the dead body and the alleged stolen property has been effected at the behest of the petitioner, distinguishes his case from those accused persons who have been enlarged on bail.

10. Even otherwise also the petitioner cannot be ordered to be released on bail only on the ground that there is a delay in trial which cannot be attributed to the prosecution.

11. The contention raised by learned counsel for the petitioner that it is a case based on circumstantial evidence or various material contradictions appeared in the statement of prosecution witnesses in itself is no ground to consider his request for release on bail for the simple reason that it is not for this Court to appreciate the evidence which is job of the learned Trial Court, hence the petitioner cannot seek any benefit by placing reliance on upon *Kavinder & Ors vs. State (NCT of Delhi)* (Supra).

12. In the case *Prasanta Kumar Sarkar v. Ashish Chatterjee & Anr. (2010) 14 SCC 496*, the Supreme Court has observed that while considering application for bail, it is incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. Among other circumstances the factors which are to be borne in mind while considering an application for bail are whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; nature and gravity of the accusation; severity of the punishment in the event of conviction; danger of the accused absconding or fleeing, if released on bail : character, behaviour, means, position and standing of the accused;

likelihood of the offence being repeated; reasonable apprehension of the witnesses being influenced; and danger, of course, of justice being thwarted by grant of bail.

13. The petitioner is involved in commission of a heinous crime i.e. murder, for which punishment may be awarded of life imprisonment or death sentence. In view of the nature and gravity of the offence allegedly committed by the petitioner, I do not find it to be a fit case to enlarge the petitioner on bail.

14. Bail application is hereby dismissed.

15. The observations made above are only for the purpose of deciding the bail application and shall not be considered as an expression on merits.

PRATIBHA RANI, J.

FEBRUARY 03, 2016

‘st’